

COUNTY BUDGET ACT: County Clerk does not incur liability on his official bond for issuing warrants so long as the same do not violate the terms of the Act.

October 19, 1936.

10-19



Honorable Frank H. Davidson,
County Clerk,
Cass County,
Harrisonville, Missouri.

Dear Sir:

This department is in receipt of your letter of October 14, making the following inquiry:

"Section 10211, R.S. (Session Laws 1933) provide that in all precincts casting less than 300 votes at the last general election, the judges shall appoint two clerks.

"If the County Court makes an order that in order to save paying judges and clerks for two days for serving on an election board, they will pay two additional clerks in case the judges of election appoint them, and I as County Clerk issue warrants on the election fund, and the amount appropriated in the budget is sufficient to pay said additional clerks, in precincts casting less than 300 votes; will I be liable on my official bond under Section 8 on page 346 of the 1933 Session acts?"

The County Budget Act (Laws of Mo. 1933, pp. 340-346), relates to the county financial system in counties of less than 50,000 population. Section 1 of the Act refers to the duties of the county court in preparing a budget, the terms of which you are no doubt familiar with. Section 2 relates to the classification of expenditures and Section 1 makes it the duty of the county court to sacredly preserve the priority of payment of the five classes therein enumerated. The other

sections relate to the duties of the various officers with respect to revising and finally preparing the estimate for the budget for the fiscal year. The penal section, Section 8, (p. 346) provides in part as follows:

" * * * * Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

We think the penal section refers exclusively to the terms of the Budget Act, i.e., that the warrants must be executed and paid out in conformity with the terms and provisions of the Act. In the instance which you present, it appears that funds have been set aside under Class 2 for the cost of elections and that there are at the present time ample funds in said class to pay election warrants.

We are of the opinion that it does not devolve upon you as County Clerk to determine the validity of the warrants in question unless said warrants present a defect apparent on its face. Under Sec. 12161, R.S. Mo. 1929, it is your duty to issue warrants on the Treasurer for moneys ordered to be paid by the County Court, and we are of the opinion that the penal section of the County Budget Act refers exclusively to your duties under said Act. When a warrant is issued by you which does not violate the terms of the Budget Act, there is no liability on your official bond.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.